COURT NO. 2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 352 of 2001
(Old No 805 of 1989)

U.P. Evas Evam
Vikas Parishad. …. **Appellant.**

Versus

Mohammad Ahmad … **Respondent.**

Sri K.S. Mehta, learned counsel for the appellant.
Sri M.S. Pal, learned counsel for the respondent.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred against the judgment and decree, dated 12-9-1989, passed by the District Judge, Nainital, in Land Acquisition Case No. 210 of 1986, whereby the learned District Judge has awarded compensation for the first belt of respondent's 72-2-0 Bigha land at the rate of Rs. 60/- per Sq.Yard and has also awarded compensation for remaining land of the said total area of 72-2-0 Bigha land @ Rs. 40/- per Sq. Yard along with additional solatium and interest as mentioned in the impugned order.

Brief facts of the case are that Plot Nos. 110 area 3610-O Bigha, 112 area 19-1-0 Bigha, 113 area 20-14-0 Bigha and 15 M. Town Area, which has now become a Municipality, Gadarpur (Nainital) was sought to be acquired under Notification dated 4.10.1980 purporting to have been issued under Section 28 of the U.P. Avas Evam Vikash Parishad Act, 1965, for Gadarpur Land Development and Housing Scheme under the orders of the Avash Commissioner U.P. Avash and Vikash Corporation, Lucknow Notification under Section 32 of the said Act was issued on 23.10.1982 and on the same day possession over the aforesaid land was taken. Respondent Mohammad Ahmad made a claim for higher amount of compensation than the compensation awarded by the Special Land Acquisition Officer Nainital, vide award dated 08-02-

1985, hence the reference has been made to the District Judge. It appears that the Special Land Acquisition Officer (in short ***SLAO)*** has awarded compensation at the rate of Rs. 5.21 per Sq.Ft. for the first belt, while for the second belt compensation has been awarded @Rs. 1,777.27 per Bigha.

The case as taken up by the respondent-claimant Mohd. Ahmad is that the entire 72-2-0 Bigha land under acquisition was located within the town area of Gadapur and it has building potentiality. The land acquired was located hardly 200 yards away from the main crossing of Gadarpur Market and there existed buildings and other commercial establishments all around this land. According to the claimant the land under acquisition was rich in value and quality. The Sate-O.P. field its written statement and disputed the claim of the claimant for enhancement of compensation. It has been stated that the compensation awarded by SLAO is just and proper.

The learned District Judge framed necessary issues in the case. After hearing both the parties and perusing the evidence on record, the learned District Judge has found that the claimant-respondent was entitled to get compensation @ Rs. 60/- per Sq. Yard for the first belt upto the depth of 50 ft. from the main road and the been concluded that the compensation awarded by the S.L.A.O. is inadequate and it deserves to be enhanced. Accordingly, the learned District Judge has passed the impugned order, as mentioned earlier. Aggrieved by the said judgment and order, the present appeal has been preferred by the U.P. Awas Evam Vikas Parihad.

We have heard learned counsel for both the parties and have perused the entire material on record including the impugned judgment and ward.

It has been submitted on behalf of the appellant that the learned District Judge has awarded compensation at the rate of Rs. 5.21 per Sq. ft. to Rs. 60/- per Sq. Yard for the first belt of the acquired land upto the depth of 50ft for an area of 6 Bigha, 4 Biswa and for the rest of the land at the rate of Rs. 40/- per Sq. Yard, which is not based on proper appraisal of evidence and the impugned order deserves to be set aside. We have perused the impugned judgment and order and the entire material on record.

From a perusal of the record, it is obvious that the S.L.A.O. has divided the entire 72-2-0 Bigha of land belonging to the claimant-respondent no. 1 Mohd. Ahmmad in two belts. The first belt comprises of the front portion of land abutting Gadarpur- second belt consists of the land situate on the western side of the first belt. The award dated 8-2-1985 shows that the S.L.A.O. has awarded compensation at the rate of Rs. 5.21 per Sq. ft. and for the second belt of land compensation has been determined at the rate of Rs. 1,777.27 per Bigha. Before the reference court, both the parties have led oral as well as documentary evidence.

Claimant-respondent no. 1 has produced as many as three witnesses in the case. P.W.1 is the claimant-respondent no.1 himself. P.W. 2 is Ram Naresh Prasad and P.W. 3 is one Lachman Dass. The O.P.-State has adduced three witnesses, viz. Madan Mohan Agrawal, Naresh Kuamr and Salman Ahamd. In documentary evidence, the claimant-respondent no.1 has field certified copies of six sale deeds per list 10-C. On the other hand the State/Collector has filed certified copies of two sale-deeds in addition to objections filed by the respondent no.1 in the matter of house-tax and copy of spot inspection, per list 24-C. In his deposition, the claimant-respondent no.1 has stated that the disputed land is situate at a higher level and no water accumulates thereon and due to its higher level, there is no possibility of growing crops on the said land. According to him, he had installed an artisan well on this

land, which was found existing on the date of Notification under Section 28 aforesaid. As against this categorical statement, given by the claimant-respondent no.1, the State/Collector has relied upon an earlier statement date 30-12-1974 of the claimant, wherein the claimant has mentioned that the land is low lying and water accumulates thereon. In his testimony before the reference court, the claimant-respondent no. 1 has withdrawn his earlier statement. The testimony of the claimant, P.W.1, has further been corroborated by the evidence of P.W.3, Lachman Dass, who happens to be a resident of Gadarpur itself. As against it, from the side of the State/Collector Madan Mohan Agrawal, Naresh Kumar and Salman Ahmad were produced in the witness box. All of them are government servants and have delta the case of land acquisition at different times. None of these witnesses have seen the land acquired at different times. Madan Mohan Agrawal has simply claimed to have found water accumulated at the time of taking over possession in October, 1984. This witness has admitted that this land was 2 ft. lower from the road level. He has been cross-examined on behalf of the claimant-respondent no.1. He could not point out as to whether and record has been maintained to the effect that water was found accumulating at the time of taking over possession. This witness has, however, admitted that the disputed land is located 200 Mts. Away from the Gadarpur Market. According to witness Naresh Kumar, an expenditure of Rs. 4.967 lacs was incurred to level the land. This passing through Gadarpur is situate at about 200 Mts. Away from the site of the disputed land. This witness has also admitted that the land under acquisition is located within the limits of Town Area Gadarpur, which has now become a Municipality. Salman Ahmad, the third witness of the Sate/Collector has stated the disputed land to be Banjar; but this fact has not been stated by either of the two other witnesses. From the side of the State/Collector no such record could be produced to indicate that water was found accumulated on the land of the claimant-respondent no.1.

From a perusal of the award dated 8-2-1985, it is apparent that the S.L.A.O. has mentioned that the land is question is located in the vicinity of Gadarpur Market and it had potentiality for commercial or Abadi. It is admitted by him that a rice mill abuts the land in dispute on the one side and on the other side, there is main road. In front of the land in dispute, there lies a Convent School and an old Mandi Samiti and there is Block Office. It further comes out that a Petrol Pump also existed as of old quit near the land acquired. The learned District Judge, has considered the entire evidence on record, while awarding compensation, and has observed as under:-

> ***"Land abutting roads is capable of being put to residential or commercial land and with all considerations a depth upto 50 ft. from the main road ought to have been included in the first belt. The rate for the first belt as awarded by the Special Land Acquisition Officer also appears to be inadequate. Upon the evidence regarding the location, strategic value and the building potentiality of the land under acquisition and in view of the sale deeds filed by the petitioner Mohd. Ahmad, the petitioner may be awarded compensation at the rate of Rs. 60/- per sq.yard for the first belt upto a depth of 50 ft. from the main road and at the rate of Rs. 40/- per sq. yard for the land of the second belt."***

From the above position, it is clear that the learned District Judge has considered the entire evidence led by the parties, therefore, it cannot be said that the order of the learned District Judge is arbitrary in any manner and without any basis. In the judgment itself, the District Judge has elaborately discussed all mterial points in arriving at the conclusions. The exemplar sale-deeds produced by the claimant and the Opposite Party both have been taken into consideration but the reference court has not relied upon them for reasons assigned by the learned District Judge in the impugned judgment itself. Moreover, the rate of Rs. 5.21 per Sq. ft. and Rs. 60/ per Sq. Yard has no major difference. It can be said that approximately, the rate of Rs. 47/- per Sq. Yard has been replaced by Rs. 60/-per Sq. Yard by the order of the District Judge, in respect of

the first belt of land upto the depth of 50 ft., for which the District Judge has given cogent reasons in his judgment and order.

For the second belt/rest of land, the SLAO has awarded compensation at the rate of Rs. 1,777.27 per Bigha. It does not stand to reason that once the S.L.A.O. has divided the land acquired in two belts and in respect of the first belt of land, compensation has been awarded @ Rs. 5.21 P per Sq.Ft., there was no good reason to award compensation at the rate of per Bigha land, i.e. Rs. 1,777.27 per Bigha. In our opinion, the reference Court has rightly awarded compensation for the rest/second belt of land, which did not possess rich potential value as the of the first belt, at a lesser rate of Rs.40/- per Sq. Yard.

It has been contended on behalf of the appellant that the learned reference court has failed to reduce 30-40% of the proposed compensation amount considering the fact that vast track of land was acquired in the present case. This submission of the learned counsel for the appellant is not tenable for the simple reason that in the present case, the Special Land Acquisition Officer has divided the land in two belts and for these two belts compensation at different rates has been assessed, therefore, it is not a case where one vast piece of land was acquired. When the belting system has been applied by the S.L.A.O. himself, then in such a case, deduction is not necessary. The learned District Judge has not committed any illegality on this count too. We fail to take a different opinion favourable to the appellant on this count.

It has been vehemently submitted by the learned counsel for the appellant that the District Judge has erred in holding that the claim petition is not barred by the principle of estoppel. We have considered the plea of estoppel raised by the appellant. It is true that the claimant Mohd. Ahmad made a statement on 30.12.1974 that the land under acquisition was low-lying and water accumulates thereon. This statement was given by the claimant to the Town Area

Committee in respect of assessment of house tax on the four shops, which had been constructed by the claimant-respondent on the portion of this land. Such a statement was not made in the present case, therefore, in our view it is not a case of estoppel to favour the appellant, therefore, the contention of the appellant on this score is not tenable. The learned District Judge has rightly discarded the plea of estoppel raised by the O.P.-State while dealing with Issue No.2 framed in the case.

Having considered the entire material before us, we are of the consistent view that the learned Reference Court has not committed any illegality or infirmity in awarding the compensation, solatium and interest to the claimant-respondent, which are based on proper appraisal of evidence on record. Nothing has been pointed out to us to warrant intereference with the findings recorded by the learned District Judge. The impugned judgment and order is liable to the upheld. The appeal fails on merit.

The appeal is dismissed. The judgment and order, under appeal, is upheld. No order as to costs.

25-9-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP